IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7376 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CP CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7376 of 2000

MR TH SOMPURA for Petitioner No. 1

MR PRADIP BHATE A.G.P. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 22/04/2004

ORAL JUDGEMENT

In this petition the issue that has been agitated by the petitioner is that the respondents have not given correct deemed date of promotion in the cadre of Deputy

Superintendent of Police and that has caused injustice to him.

1.1. According to the petitioner, he was recruited in the service of the Police Department as Police Sub Inspector on 1st July, 1971. He served as Police Sub Inspector at different places. In the year 1983, Departmental Promotion Committee ["D.P.C." for short] met for considering the grant of promotion to the post of Police Inspector. At that time, the petitioner was considered by the D.P.C. and he was found fit for promotion and he was included in the select list. He however, could not get the actual promotion as at that time, he was facing departmental inquiry and his result was placed in a sealed cover. It appears that at the end of the inquiry, the petitioner was visited with minor punishment of "censure" which on review was changed into stoppage of increment for six months. On 11th May, 1984, the petitioner was promoted to the post of Police Inspector and he was placed much below his juniors in the cadre of Police Inspector. He, therefore, made representation in the month of December, 1986 to the respondent for grant of deemed date and proper fixation of the seniority in the cadre of Police Inspector. The said representation was not decided for a considerable period. In the meanwhile, in the year, 1989, D.P.C. again met for considering the grant of promotion to the post of Deputy Superintendent of Police. It appears that at that time, the petitioner was not considered by the D.P.C. for promotion because he was not figuring in the gradation list on account of the fact that his representation for fixation of seniority could not be decided by them. Again D.P.C. met in the year 1993. In the meanwhile, the petitioner was visited with punishment of minor nature namely censure in another inquiry. It may be noted here, that initially the petitioner was placed at Sr. No. 411 in the seniority list of the Police Inspector. However, by virtue of the decision that was taken on 30th June, 1994 by the Director of Police, State of Gujarat, he was placed at Sr. No. 377-A from 411 and was placed between his immediate senior one Mr. S.S Chaudhari and his immediate junior one Mr. Bhagat.

1.2. The petitioner was later on promoted to the post of Deputy Superintendent of Police by order dated 7th March, 1996. Subsequently, he realised that he was placed in general category much below his junior in the cadre of Police Inspector. He, therefore, made representation to grant deemed date. It was to the effect that he had been wrongly placed below Mr.

Brahmbhatt in the general category; according to him, he was a member of the Scheduled Tribe and he ought to have been considered for promotion in the reserved category. He had further pointed out that he was placed much below his juniors who had been promoted in the year 1990 when the petitioner was not promoted. The representations made by the petitioner were not accepted by the officer and he continued to be in the general category below one Mr. Brahmbhatt. The petitioner has, therefore, approached this Court seeking redressal of the injustice which according to him has been caused to him.

1.3. The say of the respondent i.e. the Government is that he had been considered as special case and placed below Mr. Brahmbhatt in the cadre of Deputy Superintendent of Police. This has been done only because if he was required to be granted deemed date of his immediate junior, it would adversely affect his seniority, because his immediate junior Mr. Bhagat was promoted in the year 1996 as against the promotion of the petitioner in the year 1994.

2. Mr. T.H. Sompura, learned advocate appearing for the petitioner has submitted that there is a fallacy in the submission of the respondent because the petitioner was given deemed date and granted seniority in the cadre of Police Inspector, which ought not to have been denied in the promotional post also. He has further submitted that the petitioner had been wrongly put below Mr. Brahmbhatt in the general category because he ought to have been placed in the reserved category of the Scheduled Tribe. He has further submitted that because of the wrong fixation of seniority of the petitioner, he may lose his chance of being further promoted to the post of District Superintendent of Police, because now he has got only two years service left.

2.1. As against that Mr. Pradip Bhate learned A.G.P. appearing for the respondents has placed reliance on the decision taken by the respondents vide letter dated 2nd March, 2000, whereby, the petitioner has been placed below Mr. Brahmbhatt. Mr. Bhate has further submitted that considering the fact that the petitioner was not figuring in gradation list, he was not considered for promotion by D.P.C. in the year 1984. He was for the first time considered for promotion in the year 1995 and actually promoted in the year 1994, whereas his juniors were promoted in the year 1990. He was, therefore, treated as special case and put in the general category below Mr. Brahmbhatt.

3. Having gone through the record of this petition as well as having carefully considered the rival submissions, it is very clear that the department has committed error in placing the petitioner below Mr. Brahmbhatt. It may be noted here, that the petitioner was due for promotion to the post of Police Inspector in the year 1983, but was not promoted on account of disciplinary proceedings pending against him. Upon completion of the same, he was promoted in the year 1984 to the post of Police Inspector. He had made representations at that time to the respondents to grant him deemed date of promotion and to fix his seniority in the cadre of Police Inspector. The respondents did not consider the representation for years together i.e. almost for more than eight years. As a result of that, the petitioner could not be included in the gradation list which was placed before the D.P.C. in the year 1989. The D.P.C. did not consider his case, merely on the ground that he was not figuring in the gradation list. There was nothing adverse against the petitioner, which could have prevented the D.P.C. recommending his promotion to the higher post. It may be recalled that in the year 1988-89 no inquiry, whatsoever was pending against the petitioner. It was in the year 1993, D.P.C. again met for considering the grant of promotion to the post of Deputy Superintendent of Police. The petitioner on that occasion, for the first time was considered for grant of promotion. He was selected, but the result of the D.P.C.'s consideration was kept in a sealed cover because at that time the petitioner was facing second inquiry. The representation of the petitioner came to be accepted and he was granted deemed date and placed at Sr. No. 377-A in the cadre of Police Inspector. Subsequently even after selection of the D.P.C. the petitioner could not be promoted to the post of Deputy Superintendent of Police till 7th March, 1996. On that day the petitioner was given promotion in the cadre of Deputy Superintendent of Police. Again the petitioner made representation in the month of June, 1996 for grant of deemed date in the cadre of Deputy Superintendent of Police. By letter dated 2nd March, 2000, his representation was partly allowed as stated above and he was placed below Mr. Brahmbhatt.

3.1. Considering the fact that the petitioner could have been included in the gradation list in the year 1988-89 when the first D.P.C. met for promotion to the post of Deputy Superintendent of Police, had his representation been decided in a reasonable time by the respondents, he would have got the benefit of the deemed date. Instead, his representation was decided after more

than eight years. The petitioner had made representation in the month of December, 1987 and the D.P.C. had met in the year 1988, it is, therefore, obvious that because of the undue delay on the part of the respondents, the petitioner could not be included in the gradation list and could not be considered for promotion when the D.P.C. first met in the year 1988. As a result of non inclusion of the petitioner in the said list, his junior including one Mr. Parghi was promoted to the post of Deputy Superintendent of Police in the year 1990. Again the petitioner was considered for promotion in the year 1993. At that time some other departmental inquiry had already commenced against him. He was selected, but his result was kept in the sealed cover till the inquiry made against him was over. It was sometime in the year 1996 that minor punishment of "censure" was imposed upon him. Since D.P.C. had found him fit for promotion, he was promoted to the post of Deputy Superintendent of Police on 7th March, 1996. His immediate junior in the cadre of Police Inspector Mr. Bhagat was also facing preliminary inquiry at that time and was not considered in the D.P.C. that met in the year 1993. He subsequently, came to be promoted to the said post on 16th April, 1996. In view of this, the respondents while deciding the representation of the petitioner for the grant of deemed date of promotion in the cadre of Deputy Superintendent of Police came to the conclusion that if the petitioner was given the benefit of deemed date of promotion of his immediate junior Mr. Bhagat, it would cause him injustice because Mr. Bhagat was promoted much later. Therefore, there is obvious error committed by the department. As stated above, for no fault of the petitioner, he was not considered in the year 1988 when the D.P.C. for the first time met. Had he been considered he would have been promoted to the said post alongwith his immediate junior Mr. Parghi and others. Non inclusion in the gradation list was solely on account of lethargy on the part of the respondents. The petitioner cannot be penalized for the same. In the year 1993, when he for the first time came to be considered for promotion to the post of Deputy Superintendent of Police his immediate junior Mr. Bhagat was also facing some inquiry and, therefore, he was not in the picture at all. Junior of Mr. Bhagat one Mr. Parghi was already promoted in the year 1990, to be precise, on 6th October, 1990. The petitioner ought to have been given the said deemed date, instead of placing him below Mr. Brahmbhatt in the general category. The petitioner belongs to reserved category and that his legitimate right for being considered to promotion was denied to him in the year 1988-89. As a result of that Mr. Parghi came to be

promoted and he was left out. It was that date which was to be considered for promotion to the petitioner. But that has not been done.

3.2. In this view of the matter, the following directions are required to be given to the respondents :-

The respondents shall consider the decision for grant of deemed date to the petitioner in the cadre of Deputy Superintendent of Police in light of the observations made in this judgment. In the opinion of the department if the persons likely to be adversely affected in case the decision is taken in favour of the petitioner, they may also be given opportunity of hearing. This exercise to be completed by the respondents as early as possible and not later than 31st August, 2004.

The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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